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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/165,772 10/02/98 COOK

J 051481-5047-

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MMC2/0315

EXAMINER

POLITZER, J

ART UNIT

PAPER NUMBER

2856

15

DATE MAILED:

03/15/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/165,772

Applicant(s)
Cook et al

Examiner
Dr. Jay L. Politzer

Group Art Unit
2856



☒ Responsive to communication(s) filed on Mar 2, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-3 and 17 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-3 and 17 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Serial Number: 09/165,772

Art Unit: 2856

Title: TEMPERATURE CORRECTION METHOD AND SUBSYSTEM FOR
AUTOMOTIVE EVAPORATIVE LEAK DETECTION SYSTEMS

Filed: 10/2/98

Inventor(s): Cook et al

Attorney(s): Anchell

DETAILED ACTION

CONTINUED PROSECUTION APPLICATION

1. The request filed on 3/2/01 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/165,772 is acceptable and a CPA has been established. An action on the CPA follows.

REJECTIONS UNDER 35 U.S.C. § 112:

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For example:

Regarding Claim 1; the use of "substantially" in step [a.] renders the claim indefinite. If the pressure is known at a first point in time why does it have to be temperature compensated? In step [c.] which pressure is referred to; that at the first time point or that at the second time point.

Regarding Claim 3; what is P_1 ?

Serial Number: 09,265,772

Art Unit: 2856

REJECTIONS OVER PRIOR ART UNDER 35 U.S.C. § 103:

4. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

"A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

5. Claims 1-3¹⁷ are rejected under 35 U.S.C. § 103 as being unpatentable over Basile.

Regarding Claims 1-2; see Col 3, Li 12-41 wherein pressure and temperature are continually measured and pressure is always temperature compensated. Basile uses a variant of the perfect gas law that is obviously insubstantially different from that of the instant application and is notoriously old and well known in the art. Basile tests tanks but fails to test automotive tanks. It would have been obvious to one of ordinary skill in the art at the time of the invention to apply Basile's method to automotive tanks because this is analogous art with the same classification.

Regarding Claim 3; Basile fails to teach this exact equation. It would have been obvious to one of ordinary skill in the art at the time of the invention to use Applicant's equation or variations of it because the perfect gas law and manipulations using it are notoriously old and well known in the art.

Regarding Claim 17; Basil compensates the pressure at the first point in time at Col 3, Li 8-10. That is, at a known temperature the pressure is computed. If this does not agree with the pressure gauge reading, the gauge pressure is compensated. This provides the constant WR/V which is constant, regardless of temperature or pressure,—unless, there is a leak. If there is a leak, the gauge pressure will again not agree with the pressure calculated from the temperature.

FINAL ACTION:

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR

Serial Number: 09/265,772

Art Unit: 2856

RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

REMARKS:

7. Applicant's arguments filed 6/21/00 have been fully considered but they are not persuasive.

Applicant argues that Basile (N.B. the equation at Col 1, Li 5 is wrong) detects leaks only "in a steady, i.e., constant temperature system". Applicant misreads Basile. Basile recognizes that the temperature is changing; Col 1, Li 61-63. That is, there is a temperature gradient that makes heat flow, and ambient conditions change all the time. Basil teaches that if at any time, one computes pressure from the ideal gas law, using a measured temperature (changed from the initial temperature), it should be the same as the gauge pressure, where the gauge is exposed to the same temperature. *In that sense only*, does he mean that the pressure doesn't matter because, it affects the calculated and gauge pressure in the same way, even when the temperature is changing.

It is true that Basile doesn't compare temperature-compensated pressures at different times. On the contrary he is comparing WR/V at different times. The Examiner takes the position that to the skilled artisan who knows the gas laws, this is an insubstantial difference. It's the same as saying, for Ohm's law,

Serial Number: 09/165,772
Art Unit: 2856


that $I=E/R$ is substantially distinct from $IR=E$. Since one form of presentation is obtained from the other with simple algebra only, there is a difference, but no patentable distinction. That is, there is no innovation.

INQUIRIES:

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Jay L. Politzer whose telephone number is (703) 305-4930 and whose facsimile number is (703) 308-7725
9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Hezron E. Williams, can be reached at (703) 305-4705.
10. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

jlp 3/13/01

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HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
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